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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SKYLARK INVESTMENT PROPERTIES,) Case No. 09cv1435-JM (BLM)
12 LLC, and Arizona limited)
13 liability company,) **ORDER GRANTING JOINT MOTION TO**
14) **CONTINUE MANDATORY SETTLEMENT**
15 Plaintiff,) **CONFERENCE AND NON-EXPERT**
16) **DISCOVERY DEADLINE**
17 v.)
18) [Doc. No. 24]
19 NAVIGATORS INSURANCE COMPANY; a)
20 New York corporation; NIC)
21 INSURANCE COMPANY, a business)
22 organization of an unknown)
23 form; and DOES 1 through 10,)
24)
25 Defendants.)
26)
27)
28)

On February 11, 2010, parties to the above matter filed a joint motion to continue the Mandatory Settlement Conference and the non-expert discovery deadline. Doc. No. 24. Good cause appearing, the parties' joint motion is **GRANTED** as follows:

1. A Mandatory Settlement Conference shall be conducted on April 1, 2010 at 2:00 p.m. in the chambers of Magistrate Judge Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA 92101. All discussions at the Mandatory Settlement Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English

1 speaking party is responsible for arranging for the appearance of an
2 interpreter at the conference.

3 a. **Personal Appearance of Parties Required:** All parties,
4 adjusters for insured defendants, and other representatives of a party
5 having full and complete authority to enter into a binding settlement,
6 as well as the principal attorneys responsible for the litigation, must
7 be present **in person** and legally and factually prepared to discuss
8 settlement of the case. Counsel appearing without their clients
9 (whether or not counsel has been given settlement authority) will be
10 cause for immediate imposition of sanctions and may also result in the
11 immediate termination of the conference.

12 Unless there are extraordinary circumstances, persons required to
13 attend the conference pursuant to this Order shall not be excused from
14 personal attendance. **Requests for excuse from attendance for**
15 **extraordinary circumstances shall be made in writing at least three**
16 **court days prior to the conference.** Failure to appear **in person** at the
17 Mandatory Settlement Conference will be grounds for sanctions.

18 b. **Full Settlement Authority Required:** In addition to
19 counsel who will try the case, a party or party representative with **full**
20 **settlement authority**¹ must be present for the conference. In the case
21 _____

22 ¹ "Full settlement authority" means that the individuals at the settlement
23 conference must be authorized to explore settlement options fully and to agree at that
24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
25 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
26 discretion and authority" to change the settlement position of a party. Pitman v.
27 Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
28 a person with unlimited settlement authority to attend the conference contemplates that
the person's view of the case may be altered during the face to face conference. Id.
at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 of a corporate entity, an authorized representative of the corporation
2 who is not retained outside counsel must be present and must have
3 discretionary authority to commit the company to pay an amount up to the
4 amount of Plaintiff's prayer (excluding punitive damages prayers). The
5 purpose of this requirement is to have representatives present who can
6 settle the case during the course of the conference without consulting
7 a superior. Counsel for a government entity may be excused from this
8 requirement so long as the government attorney who attends the Mandatory
9 Settlement Conference (1) has primary responsibility for handling the
10 case, and (2) may negotiate settlement offers which the attorney is
11 willing to recommend to the government official having ultimate
12 settlement authority.

13 c. **Confidential Settlement Statements Required:** No later
14 than **March 25, 2010**, the parties shall submit directly to Magistrate
15 Judge Major's chambers confidential settlement statements no more than
16 five pages in length. **These confidential statements shall not be filed**
17 **or served on opposing counsel.** Each party's confidential statement must
18 include the following:

19 (i) A brief description of the case, the claims and/or
20 counterclaims asserted, and the applicable defenses or position
21 regarding the asserted claims;

22 (ii) A specific and current demand or offer for
23 settlement addressing all relief or remedies sought. If a specific
24 demand or offer for settlement cannot be made at the time the brief is
25 submitted, then the reasons therefore must be stated along with a
26 statement as to when the party will be in a position to state a demand
27 or make an offer; and

28 (iii) A brief description of any previous settlement

1 negotiations, mediation sessions, or mediation efforts.

2 General statements that a party will "negotiate in good faith" is
3 not a specific demand or offer contemplated by this Order. It is
4 assumed that all parties will negotiate in good faith.

5 d. **Requests to Continue a Mandatory Settlement Conference:**

6 Any request to continue the Mandatory Settlement Conference or request
7 for relief from any of the provisions or requirements of this Order must
8 be sought by a **written ex parte application**. The application must (1)
9 be supported by a declaration of counsel setting forth the reasons and
10 justifications for the relief requested, (2) confirm compliance with
11 Civil Local Rule 83.3(h), and (3) report the position of opposing
12 counsel or any unrepresented parties subject to the Order. **Absent**
13 **extraordinary circumstances, requests for continuances will not be**
14 **considered unless submitted in writing no fewer than seven days prior**
15 **to the scheduled conference.**

16 **If the case is settled in its entirety before the scheduled date**
17 **of the conference, counsel and any unrepresented parties must still**
18 **appear in person, unless a written joint notice confirming the complete**
19 **settlement of the case is filed no fewer than twenty-four hours before**
20 **the scheduled conference.**

21 2. Non-expert discovery shall be completed by all parties on or
22 before **May 15, 2010**. "Completed" means that all discovery under Rules
23 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas
24 under Rule 45, must be initiated a sufficient period of time in advance
25 of the cut-off date, so that it may be completed by the cut-off date,
26 taking into account the times for service, notice, and response as set
27 forth in the Federal Rules of Civil Procedure.

28 Counsel shall promptly and in good faith meet and confer with

1 regard to all discovery disputes in compliance with Federal Rule of
2 Civil Procedure 37(a)(1) and Civil Local Rule 26.1(a). All discovery
3 motions shall be filed within thirty days after counsel have met and
4 conferred and reached an impasse with regard to any particular discovery
5 issue, but in no event shall discovery motions be filed more than sixty
6 days after the date upon which the event giving rise to the discovery
7 dispute occurred. For oral discovery, the event giving rise to the
8 discovery dispute is the completion of the transcript of the affected
9 portion of the deposition. For written discovery, the event giving rise
10 to the discovery dispute is either the service of the response, or, if
11 no response was served, the initial date the response was due. In
12 addition, all discovery motions must be filed within thirty days after
13 the close of discovery.

14 3. All other dates and deadlines shall remain as previously set.
15 See doc. no. 18.

16 **IT IS SO ORDERED.**

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18 DATED: February 11, 2010

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20 BARBARA L. MAJOR
21 United States Magistrate Judge
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